



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/709,234	11/09/2000	Jeffrey R. Boulter	00-8832	3098
25189	7590	11/17/2004	EXAMINER	
CISLO & THOMAS, LLP 233 WILSHIRE BLVD SUITE 900 SANTA MONICA, CA 90401-1211			LEZAK, ARRIENNE M	
			ART UNIT	PAPER NUMBER
			2143	

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/709,234	BOULTER ET AL.	
	Examiner	Art Unit	
	Arrienne M. Lezak	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) * | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

1. Examiner notes that Claims 1, 11, 24 & 35 have been amended, and no claims have been added or cancelled. All Claims not explicitly addressed herein are found to be addressed within prior Office Action dated 15 March 2004 as reiterated herein below.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 21-23 & 46-48 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 5,996,015 to Day.

4. Regarding Claims 21 & 46, Day discloses a method, system and interface for broadcasting data streams through a computer network, (including, but not limited to, the Internet - per pending Claims 12 and 36), to a user's computer, (Abstract; Fig. 1; and Col. 3, lines 27-28), comprising:

- providing a database of data streams available to said computer network, (Col. 5, lines 24-38);
- selecting a data stream according to a selection method, (Col. 5, lines 7-19);

- transmitting one of said data streams to the user's computer via a data stream controller and user interface including a media player, (Col. 5, lines 7-19);
- receiving feedback expressing a preference from the user regarding said transmitted data stream via a user interface which includes a data stream information display, (Col. 5, lines 7-22); and
- updating said selection method, modifying its selection of data streams for transmission to better reflect said preference of the user, (Col. 5, lines 7-29); whereby
- data streams transmitted to the user are biased according to said reference, (Col. 5, lines 7-52).

Therefore this reference may reasonably be read to teach or describe every element or claim limitation of Claims 21 & 46.

5. Regarding Claims 22 & 47, Day discloses a method, system and interface for broadcasting data streams through the Internet further comprising:

- generating a transmission list of data streams to transmit to the user's computer, (Col. 5, lines 7-19; Col. 6, lines 26-32; and Col. 9, lines 31-33);
- transmitting one of said listed data streams to the user's computer, (Col. 5, lines 7-19); and
- updating said list of data streams to better reflect said preference of the user, (Col. 5, lines 7-29); whereby

- data streams transmitted to the user are biased according to said preference, (Col. 5, lines 7-52).

Therefore this reference may reasonably be read to teach or describe every element or claim limitation of Claims 22 & 47.

6. Regarding Claims 23 & 48, Day discloses a method, system and interface for broadcasting data streams through the Internet wherein conformance with applicable copyright law applies to all transmitted data streams, (Fig. 1; Fig. 2; and Col. 3, lines 1-32). Examiner notes that conformance with applicable copyright law inherently applies to all transmissions wherever and whenever they occur, to whomever they are displayed and for whatever they contain. Thus, as Day teaches the transmission of content generally, copyright law is inherently relevant and applicable to the same. Therefore this reference may reasonably be read to teach or describe every element or claim limitation of Claims 23 & 48.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-20 & 24-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of US Patent 5,996,015 to Day in view of US Patent US 6,192,340 B1 to Abecassis.

9. Regarding Newly Amended Claims 1, 11, 24 & 35 and original Claims 12 & 36, Day discloses a method, system and interface for broadcasting data streams through a computer network, (including, but not limited to, the Internet - per pending Claims 12 & 36), to a user's computer, (Abstract; Fig. 1; and Col. 3, lines 27-28), comprising:

- providing a database of data streams available to said computer network, (Col. 5, lines 24-38);
- selecting a data stream according to a selection method, (Col. 5, lines 7-19);
- transmitting one of said data streams to the user's computer via a data stream controller and user interface including a media player, (Col. 5, lines 7-19);
- receiving feedback expressing a preference from the user regarding said transmitted data stream via a user interface which includes a data stream information display, (Col. 5, lines 7-22); and
- updating said selection method, modifying its selection of data streams for transmission to better reflect said preference of the user, (Col. 5, lines 7-29); whereby
- data streams transmitted to the user are biased according to said reference, (Col. 5, lines 7-52).

10. Though Day discloses a database of data streams, Day does not specifically indicate that the selection of a data stream is from said database, (per Applicant's amended claim language). Abecassis discloses a virtual audio library, which library is a

Art Unit: 2143

database of information relating to audio items, and which database may also serve the object of establishing and maintaining user preferences, (Col. 14, lines 35-67 & Cols. 15-17). It would have been obvious to one of ordinary skill in the art at the time of invention by Applicant to incorporate the database selection means of Abecassis into the Day multimedia device as noted within Abecassis. Specifically, Abecassis teaches that apparatuses for integrating audio items responsive to user preferences, (Col. 3, lines 8-11), include "multimedia players", which multimedia players include a set-top box capable of retrieving video-on-demand services from a remote video service provider, (Col. 5, lines 66-67 & Col. 5, lines 1-24). Moreover, Examiner notes that Abecassis discloses both "Musimatch Jukebox" and "RealJukebox", wherein both jukebox software items render obvious Applicant's invention, including establishment of preferences via rating, (Col. 17, lines 56-61). Thus, Newly Amended Claims 1, 11, 24 & 35 and original Claims 12 & 36 are found to be unpatentable over the combined teachings of Day in view of Abecassis.

11. Regarding Claims 2, 17, 18, 25, 41 & 42, Day in view of Abecassis discloses a method, system and interface for broadcasting data streams through the Internet further comprising:

- generating a transmission list of data streams to transmit to the user's computer, (Col. 5, lines 7-19; Col. 6, lines 26-32; and Col. 9, lines 31-33);
- transmitting one of said listed data streams to the user's computer, (Col. 5, lines 7-19); and

- updating said list of data streams to better reflect said preference of the user, (Col. 5, lines 7-29); whereby
- data streams transmitted to the user are biased according to said preference, (Col. 5, lines 7-52).

Thus, Claims 2, 17, 18, 25, 41 & 42 are found to be unpatentable over the combined teachings of Day in view of Abecassis.

12. Regarding Claims 3 and 26, Day in view of Abecassis discloses a method, system and interface for broadcasting data streams through the Internet further comprising receiving feedback expressing preferences from sources other than the user, (Col. 1, lines 43-58 and Col. 4, lines 23-64). Thus, Claims 3 and 26 are found to be unpatentable over the combined teachings of Day in view of Abecassis.

13. Regarding Claims 4 and 27, as noted above, Day in view of Abecassis discloses data stream selection from individuals other than the user, including but not limited to, a network administrator, manager or broadcast station, (Col. 1, lines 43-67). Day does not specifically enumerate that the "other users" derive their selection from a list of popular songs. It would have been obvious to one of ordinary skill in the art at the time of invention by Applicant to base a data stream selection on the most popular multimedia content available, as to do the opposite would not serve to cultivate an audience. As Day teaches the network distribution of on-demand multimedia, the available content would obviously need to be desired by, and thus popular among users, especially broadcast stations desirous of building an audience. Thus, Claims 4

and 27 are found to be unpatentable over the combined teachings of Day in view of Abecassis.

14. Regarding Claims 5 and 28, Day in view of Abecassis discloses a method, system and interface for broadcasting data streams through the Internet further comprising informing the user generally regarding said database and said data streams, querying the user as to data stream preference prior to generating an initial transmission list of data streams, whereby said initial list reflects general preferences of the user, (Col. 5, lines 7-52). Thus, Claims 5 and 28 are found to be unpatentable over the combined teachings of Day in view of Abecassis.

15. Regarding Claims 6, 13, 14, 29, 37 and 38, Day in view of Abecassis discloses a method, system and interface for broadcasting data streams through the Internet wherein said data streams are selected from the group consisting of songs and videos, (Col. 3, lines 24-26 and Col. 5, lines 58-60). Thus, Claims 6, 13, 14, 29, 37 and 38 are found to be unpatentable over the combined teachings of Day in view of Abecassis.

16. Regarding Claims 7, 8, 30 and 31, Day in view of Abecassis discloses a method, system and interface for broadcasting data streams through the Internet wherein said transmitted data stream is removed from said transmission list, (per pending Claims 7 and 30), and listed on a transmitted data stream list, (per pending Claims 8 and 31), (Col. 5, lines 7-67 and Col. 6, lines 1-31). Thus, Claims 7, 8, 30 and 31 are found to be unpatentable over the combined teachings of Day in view of Abecassis.

17. Regarding Claims 9, 10, 19, 20, 32, 33, 43 & 44, Day in view of Abecassis discloses a method, system and interface for broadcasting data streams through the

Internet wherein conformance with applicable copyright law applies to all transmitted data streams, (Fig. 1; Fig. 2; and Col. 3, lines 1-32). Examiner notes that conformance with applicable copyright law inherently applies to all transmissions wherever and whenever they occur, to whomever they are displayed and for whatever they contain. Thus, as Day teaches the transmission of content generally, copyright law is inherently relevant and applicable to the same. Thus, Claims 9, 10, 19, 20, 32, 33, 43 & 44 are found to be unpatentable over the combined teachings of Day in view of Abecassis.

18. Regarding Claims 15, 16, 39 and 40, as noted above, Day in view of Abecassis discloses data stream transmission of multimedia content over the Internet, (Col. 5, lines 7-52). Day does not specifically enumerate the use of a user interface comprising an electronic media player, (per pending Claims 15 and 39), selected from a group consisting of RealPlayer, Apple QuickTime, and Windows Media Player, (per pending Claims 16 and 40). It would have been obvious to one of ordinary skill in the art at the time of invention by Applicant to utilize an electronic media-capable interface within an Internet-capable multimedia distribution system, such as the one disclosed in Day. It would have been equally obvious to use a media player available and capable of multimedia distribution, such as RealPlayer, Apple QuickTime, and Windows Media Player. As Day teaches multimedia distribution over a network, including but not limited to the Internet, the use of an interface capable of such distribution would have been obvious and necessary. Moreover, Abecassis discloses electronic media players, including RealPlayer, (Col. 4, lines 30-65). Thus, Claims 15, 16, 39 and 40 are found to be unpatentable over the combined teachings of Day in view of Abecassis.

19. Regarding Claims 34 and 45, Day in view of Abecassis discloses a method, system and interface for broadcasting data streams through the Internet wherein said updated selection method takes into account all preferences expressed by user, (Col. 5, lines 7-52). Abecassis further discloses the same, (Col. 17, lines 56-61 & Col. 18, lines 55-67). Thus, Claims 34 and 45 are found to be unpatentable over the combined teachings of Day in view of Abecassis.

Response to Arguments

20. Applicant's arguments filed 19 July 2004, have been fully considered but they are not persuasive. Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

21. Regarding Newly Amended Claims 1, 11, 24 & 35, Examiner notes that Applicant's assertions throughout the amendment, pertaining to the claims as amended, consistently focus on the data stream being selected & transmitted from the database of data streams. As Examiner has addressed the same, (as noted herein above), Claims 1, 11, 24 & 35 remain unpatentable. Regarding those claims originally rejected under 35 U.S.C. 103(a), Examiner finds that their dependence from newly amended independent claims facilitates new grounds for rejection, which new grounds have been addressed herein. Thus, Examiner has addressed Applicant's Amendment, and has further rejected all Amended and Original Claims, as noted herein above.

Art Unit: 2143

22. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

23. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Conclusion

24. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

RealNetworks archived webpages;

Musicmatch archived webpages.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arrienne M. Lezak whose telephone number is (571)-272-3916. The examiner can normally be reached on M-F 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571)-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Arrienne M. Lezak
Examiner
Art Unit 2143

AML



DAVID WILEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100